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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/540,214	03/31/2000	Jay S. Walker	00-006	9740

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WALKER DIGITAL
FIVE HIGH RIDGE PARK
STAMFORD, CT 06905

EXAMINER

DURAN, ARTHUR D

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 12/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/540,214

Applicant(s)

WALKER ET AL.

Examiner

Arthur Duran

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-96 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-96 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-96 have been examined.

Response to Amendment

2. The Amendment filed on 11/21/03 is insufficient to overcome the Bergh, Scroggie, and Kanter reference.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-68 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are rejected under 35 U.S.C. 101 because these claims have no connection to the technological arts. The method claims do not specify how the claims utilize any technological arts. For example, no network or server is specified. To overcome this rejection, the Examiner recommends that the Applicant amend the claim to specify or to better clarify that the method is utilizing a medium or apparatus, etc within the technological arts. Appropriate correction is required.

As an initial matter, the United States Constitution under Art. I, §8, cl. 8 gave Congress the power to "[p]romote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries". In carrying out this power, Congress authorized under 35 U.S.C. §101 a grant of a patent to

Art Unit: 3622

"[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition or matter, or any new and useful improvement thereof." Therefore, a fundamental premise is that a patent is a statutorily created vehicle for Congress to confer an exclusive right to the inventors for "inventions" that promote the progress of "science and the useful arts". The phrase "technological arts" has been created and used by the courts to offer another view of the term "useful arts". See *In re Musgrave*, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of whether an invention is eligible for a patent is to determine if the invention is within the "technological arts".

Further, despite the express language of §101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by §101. These exceptions include "laws of nature", "natural phenomena", and "abstract ideas". See *Diamond v. Diehr*, 450, U.S. 175, 185, 209 USPQ (BNA) 1, 7 (1981). However, courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

This "two prong" test was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson*, 409 U.S. 63, 175 USPQ (BNA) 673

Art Unit: 3622

(1972). Additionally, the court decided separately on the issue of the "technological arts". The court developed a "technological arts" analysis:

The "technological" or "useful" arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., whether it "enhances" the operation of a machine. *In re Toma* at 857.

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.*, the court found that the "mathematical exception" using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a "useful, concrete and tangible result". See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no "business method exception" since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that "[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112." See *State Street Bank & Trust Co.* at 1377. Both of these analysis goes towards whether the claimed invention is non-statutory because of the presence of an abstract idea. Indeed, *State Street* abolished the Freeman-Walter-Abele test used in *Toma*.

Art Unit: 3622

However, State Street never addressed the second part of the analysis, i.e., the "technological arts" test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) was already determined to be within the technological arts under the *Toma* test. This dichotomy has been recently acknowledged by the Board of Patent Appeals and Interferences (BPAI) in affirming a §101 rejection finding the claimed invention to be non-statutory. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BdPatApp&Int 2001).

In the current application, no technological art (i.e., computer, network, server) is being utilized by claims 1-68. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-15, 17-21, 24-47, and 49-96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergh (6,112,186) in view of Scroggie (5,970,469).

Claim 1, 7, 10, 17-21, 24, 29, 37-45, and 49-96: Bergh discloses a system and method for:
receiving from a customer an indication of a product category or a service category (col 3, lines 17-25; col 1, lines 24-32; col 11, lines 5-7; col 11, lines 49-53; col 27, lines 9-14). Additionally,

Art Unit: 3622

If a user can become more experienced in a particular domain, as Bergh discloses (col 11, lines 49-53), it is inherent that that user is selecting that domain more regularly. Bergh also discloses that the user can choose different product categories by selecting different websites (col 28, lines 5-11; col 28, lines 18-22). Bergh also discloses that user category and item selection in different categories can be interconnected (col 28, lines 10-15; col 28, lines 20-25; col 28, lines 49-53).

Bergh further discloses selecting for the customer one of the products in the product category or the services in the service category (col 27, lines 17-20; col 27, lines 27-30; col 27, lines 65-col 28, lines 2; col 1, lines 50-54).

Bergh further discloses providing an indication of said selected one of said at least two products or said at least two services (col 27, lines 17-20; col 27, lines 27-30; col 27, lines 65-col 28, lines 2).

Bergh further discloses a retailer category (col 1, lines 24-32; col 3, lines 17-25) where the retailer category is restaurants, clothing stores, World Wide Web pages, etc.

Bergh further discloses that the user makes a purchase (col 27, lines 65-col 28, lines 2).

Bergh does not explicitly disclose arranging for a benefit to be provided if the product or service selected for the customer has been purchased.

However, Scroggie discloses arranging for a benefit to be provided if the product or service selected for the customer has been purchased (col 7, lines 65-67; col 8, lines 28-30; col 5, lines 62-65; col 6, lines 7-13). It is inherent to rebates that they provide a benefit if the product or service has been purchased.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Scroggie's rebate for a purchase made to Bergh's customer

Art Unit: 3622

selecting a product category and subsequent item recommendation. One would have been motivated to do this because a rebate is an obvious way of encouraging a customer to purchase a product.

Claims 2 and 30: Bergh and Scroggie disclose a method as in claims 1 and 29, and Bergh further discloses that said indication of said selected one of said at least two products or said at least two services is provided to at least one of the following: a customer, a customer device, a retailer, retailer device, a seller, a seller device, or a controller (col 3, lines 17-25; col 1, lines 24-32; col 26, line 43-col 28, line 56).

Claims 3 and 31: Bergh and Scroggie disclose a method as in claims 1 and 29, and Bergh further discloses that said indication of said selected one of said at least two products or said at least two services is provided by at least one of the following: a customer, a customer device, a retailer, retailer device, a seller, a seller device, or a controller (col 3, lines 17-25; col 1, lines 24-32; col 26, line 43-col 28, line 56).

Claims 4 and 32: Bergh and Scroggie disclose a method as in claims 1 and 29, and Bergh further discloses that said indication of a product category including at least two products or a service category including at least two services is received by at least one of the following: a customer, a customer device, a retailer, retailer device, a seller, a seller device, or a controller (col 3, lines 17-25; col 1, lines 24-32; col 26, line 43-col 28, line 56).

Claims 5 and 33: Bergh and Scroggie disclose a method as in claims 1 and 29, and Bergh further discloses that said indication of a product category including at least two products or a service category including at least two services is received from at least one of the following: a

Art Unit: 3622

customer, a customer device, a retailer, retailer device, a seller, a seller device, or a controller (col 3, lines 17-25; col 1, lines 24-32; col 26, line 43-col 28, line 56).

Claims 6 and 34: Bergh and Scroggie disclose a method as in claims 1 and 29, and Bergh further discloses that said indication of a product category including at least two products or a service category including at least two services is completed by at least one of the following: a customer, a customer device, a retailer, retailer device, a seller, a seller device, or a controller (col 3, lines 17-25; col 1, lines 24-32; col 26, line 43-col 28, line 56).

Claims 8 and 35: Bergh and Scroggie disclose a method as in claims 7 and 29, and Bergh further discloses that said indication of said benefit is provided to at least one of the following: a customer, a customer device, a retailer, retailer device, a seller, a seller device, or a controller (col 3, lines 17-25; col 1, lines 24-32; col 26, line 43-col 28, line 56).

Claims 9 and 36: Bergh and Scroggie disclose a method as in claims 7 and 29, and Bergh further discloses that said indication of said benefit is provided by at least one of the following: a customer, a customer device, a retailer, retailer device, a seller, a seller device, or a controller (col 3, lines 17-25; col 1, lines 24-32; col 26, line 43-col 28, line 56).

Claim 11: Bergh and Scroggie disclose a method as in claim 10, and Bergh further discloses that said indication of a purchase is received from at least one of the following: a customer, a customer device, a retailer, retailer device, a seller, a seller device, or a controller (col 3, lines 17-25; col 1, lines 24-32; col 26, line 43-col 28, line 56).

Claim 12: Bergh and Scroggie disclose a method as in claim 10, and Bergh further discloses that said indication of a purchase is received by at least one of the following: a

Art Unit: 3622

customer, a customer device, a retailer, retailer device, a seller, a seller device, or a controller (col 3, lines 17-25; col 1, lines 24-32; col 26, line 43-col 28, line 56).

Claims 13-15, 46, 47: Bergh and Scroggie disclose disclose a method as in claim 1, 43. Bergh further discloses receiving a customer identifier and determining a customer identifier (col 28, lines 47-56).

Bergh further discloses a purchase (col 27, line 65-col 28, line 2) and making a payment (col 19, lines 6-16).

Bergh does not explicitly disclose a payment identifier, receiving a payment identifier, that said payment identifier is customer identifier.

However, Scroggie discloses a payment identifier, receiving a payment identifier, that said payment identifier is customer identifier (col 12, lines 18-22).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Scroggie's payment identifier to Bergh's purchase. One would have been motivated to do this because purchases can be efficiently tracked and completed utilizing payment identifiers.

Claim 25-28: Bergh and Scroggie discloses a method as in claim 1. Bergh further discloses a purchase (col 27, line 65-col 28, line 2) and making a payment (col 19, lines 6-16).

Bergh does not explicitly disclose a price or condition of purchase. However, Scroggie discloses providing an indication of or determining a price for said selected one of said at least two products or at least two services (col 13, lines 64-col 14, line 2 and col 18, lines 11-25).

Art Unit: 3622

Scroggie further discloses determining a condition or providing an indication of said condition of purchase of said selected one of said at least two products or at least two services (col 2, lines 59-65 and col 12, lines 8-15).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Scroggie' price or condition of purchase to Bergh purchase of an item or service. One would have been motivated to do this because price or condition of purchase is obvious information for making a purchase that lets a customer better determine if they desire to make a purchase.

5. Claims 16, 22, 23, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergh (6,112,186) in view of Scroggie (5,970,469) in further view of Kanter (5,537,314).

Claims 16 and 48: Bergh and Scroggie discloses a method as in claims 1 and 43. Bergh further discloses a penalty (col 19, lines 9-15) and making a purchase (col 27, line 65-col 28, line 2).

Bergh does not explicitly disclose a penalty if the product is not purchased.

However, Kanter discloses a referral recognition system for an incentive award program. Kanter further discloses a penalty for failing to purchase an item selected (col 10, lines 30-35).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Kanter's penalty for failed purchases to Bergh's recommendation and purchase method. One would have been motivated to do this so that Bergh can discourage purchases that are not possible.

Art Unit: 3622

Claim 22: Bergh and Scroggie disclose a method as in claim 1. Bergh further discloses an indication of a penalty (col 19, lines 9-15) and making a purchase (col 27, line 65-col 28, line 2).

Bergh does not explicitly disclose providing an indication of a penalty if the product is not purchased.

However, Kanter discloses a referral recognition system for an incentive award program. Kanter further discloses a penalty for failing to purchase an item selected (col 10, lines 30-35).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Kanter's penalty for failed purchases to Bergh's recommendation and purchase method. One would have been motivated to do this so that Bergh can discourage purchases that are not possible.

Claim 23: Bergh and Scroggie disclose a method as in claim 1. Bergh further discloses arranging for a penalty (col 19, lines 9-15) and making a purchase (col 27, line 65-col 28, line 2).

Bergh does not explicitly disclose arranging for a penalty if the product is not purchased.

However, Kanter discloses a referral recognition system for an incentive award program. Kanter further discloses a penalty for failing to purchase an item selected (col 10, lines 30-35).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Kanter's penalty for failed purchases to Bergh's recommendation and purchase method. One would have been motivated to do this so that Bergh can discourage purchases that are not possible.

Response to Arguments

6. Applicant's arguments with respect to claims 1-96 have been considered but are not found persuasive.

Examiner notes that while specific references were made to the prior art, it is actually also the prior art in its entirety that is being referred to.

In regards to Applicant's Arguments dated 11/21/03 concerning the 101 Technological Arts rejection of claims 1-68, Examiner has stated and cited the current Office Policy concerning the interpretation of 35 USC 101 and the technological arts. Applicant must either amend the claims to correspond with 35 USC 101 as cited above or appeal to the patent board.

On page of Applicant's Amendment dated 11/21/03, Applicant states, "Neither Bergh nor Scroggie discloses receiving from a customer an indication of a category of at least two items (whether it be products, services, or retailers) and then selecting for the customer one of the at least two items included in the category indicated by the customer."

However, Bergh discloses the user indicating a category (col 28, lines 5-10), that the category has at least two items (col 28, lines 5-10), and then selecting for the customer one of the at least two items in the category indicated by the customer (col 27, lines 16-23). Further, the user indicated a category whether it be music, albums, artists, songs, etc (col 28, lines 5-10). Then, the system can recommend items at any time (col 27, lines 16-20). Hence, the user selects the category to rate, then the user can request recommendations. Bergh further discloses making recommendations to a user for a domain or category that a user is in or has selected (col 3, lines 15-22) and that these recommendations can be made at any time (col 27, lines 16-23). Bergh further discloses the user selecting a category of items and the user then receiving

Art Unit: 3622

recommendations in that category selected (col 14, lines 20-26). Bergh further discloses recommending a specific item in a recommendation group (col 14, lines 9-13; col 14, lines 30-38).

Bergh further discloses that the user need not provide demographic or ratings information (col 28, lines 56-61) before receiving recommendations (col 27, lines 16-23).

Therefore, Bergh discloses all the features that the Applicant cites in this argument.

On page 40, Applicant states, "In Bergh, an item that is recommended to a user is not selected from the category of items that the user provided rating for or otherwise provided an indication of."

However, Bergh discloses that the user selects the category (col 27, lines 9-14; col 28, lines 5-10) and that the user is provided recommendations in that category (col 14, lines 21-26).

Therefore, Bergh discloses all the features that the Applicant cites in this argument.

On page 43, Applicant states, "Neither Bergh, Scroggie, or Katner disclose the general claim feature of imposing a penalty if said selected one of said at least two products or said at least two services is not purchased."

Examiner further notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. In this case, Applicant merely states, 'is not purchased'. Examiner notes that the online Merriam Webster Dictionary at www.m-w.com defines 'purchase' as "**1 a** *archaic* : GAIN, ACQUIRE **b** : to acquire (real estate) by means other than descent or inheritance **c** : to obtain by paying money or its equivalent". Therefore, it is inherent to a purchase that the object or item actually be acquired or obtained. If the object or item was not acquired or obtained, then no purchase was made.

Hence, Bergh discloses purchasing (col 27, line 65-col 28, line 2) and discloses a penalty for communications that are deemed not worthwhile (col 9, lines 9-17). Bergh further discloses sending failure notifications for user actions that are unsuccessful (col 31, lines 32-35).

Kanter discloses that, when utilizing checks, checks run the risk of not clearing and that there can then be a penalty fee (col 10, lines 30-35). Kanter further discloses purchasing (col 2, lines 18-22). Additionally, It is inherent to checks that they can be utilized for purchasing.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Kanter's penalty for failed funding utilized for purchases to Bergh's penalties in a recommendation and purchasing method. One would have been motivated to do this in order to better assure that a user is able to complete what they attempt to purchase.

In regards to Applicant's arguments that there is no motivation to combine the Bergh and Scroggie references or the Bergh, Scroggie, and Kanter references, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Furthermore, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge

Art Unit: 3622

gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

As Applicant states on page 41-42 of Applicant's Amendment, "The reason for the modification or combination must come from some teaching, suggestion. . . or in knowledge generally available to one having ordinary skill in the art."

Hence, the motivation can be found in the art itself or in knowledge generally available to one skilled in the art.

In this case, Bergh discloses purchasing (col 27, line 65-col 28, line 2), user profiling (col 2, lines 23-25), marketing, advertising (col 31, lines 41-48), targeting (col 18, lines 30-35).

Scroggie discloses purchasing (col 1, lines 17-22), user profiling (col 13, lines 24-35), marketing, advertising (col 4, lines 25-32), targeting (col 4, lines 39-50).

Kanter discloses purchasing (col 2, lines 17-22), marketing, advertising (col 1, lines 10-21), targeting (col 1, lines 24-28), and tracking a users activities (col 4, lines 44-46; col 8, lines 5-10; col 21, lines 57-65).

Therefore, the Bergh, Scroggie, and Kanter are related in their intentions and objects. And, specific features of the Scroggie or Kanter reference were added to Bergh in order to

Art Unit: 3622

further the purchasing, user profiling, marketing, advertising, and targeting that Bergh is doing and that Bergh has as a common objective or activity with Scroggie and Kanter.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (703)305-4687. The examiner can normally be reached on Mon- Fri, 7:30-4:00.

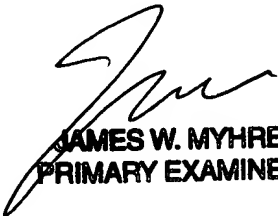
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (703)305-8469. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9326.

Art Unit: 3622

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

AD

12/4/03


JAMES W. MYHRE
PRIMARY EXAMINER